

**IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD**

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

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Writ Petition No.6381 of 1997

DATED 5-3-2007

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BETWEEN

Moses Augustine

.. Petitioner

And

The Member Secretary,
Andhra Pradesh State Electricity Board,
Vidyut Soudha, Khairtabad,
Hyderabad.

.. Respondent

THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO.6381 of 1997

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ORDER:

The grievance of the petitioner, an Assistant Divisional Engineer, who retired in the year 1987 is that since the respondent Board, consequent to the judgment of the Supreme Court in C.A No.5336 of 1983 dated 21.8.1990 had revised the seniority list of Assistant Divisional Engineers in B.P.Ms.No.1118 dated 17.10.1989 and fixed his seniority at serial No.65 and had given him notional promotion as Assistant Divisional Engineer, Electrical with effect from 1.9.1967, he was also entitled to be considered for further promotion as Divisional Engineer on his becoming eligible for

promotion 10 years after 1.9.1967 i.e., with effect from 1.9.1977.

Sri C.Srinivas Baba, learned counsel for the petitioner, would contend that since the counter affidavit is silent as to what transpired between the years 1977 and 1982, a mandamus should be issued to the respondents to consider the case of the petitioner for promotion as Divisional Engineer for the panel years 1977-78 to 1981-82.

In the counter affidavit filed on behalf of the respondents, it is specifically stated that pursuant to the issue of revised seniority list of Assistant Divisional Engineers, Electrical as on 1.10.1973 in B.P.Ms.No.1118 dated 17.10.1989, promotions made to the category of Divisional Engineers, Electrical from the panels drawn from 12.4.1982 to 17.11.1986 was reviewed on 6.12.1989 for inclusion or otherwise of the Assistant Divisional Engineers, Electrical who were not considered earlier for promotion as Divisional Engineers, Electrical and for assigning appropriate places in respect of those who were already promoted as Divisional Engineers, Electrical. The counter affidavit also refers to the guidelines which were required to be adopted for review of such selections. The original position obtaining at the time of drawal of the lists of approved candidates from 12.4.1982 onwards and the subsequent developments, which lead to the review made on 6.12.1989 in terms of the orders issued in B.P Ms.No.1118 dated 17.10.1989 were kept in view by the respondent Board for drawal of the revised seniority list of Divisional Engineers. The number of candidates empanelled for promotion as Divisional Engineers, Electrical in each list of approved candidates originally/review of

deferred cases subsequently, was taken as the basis for regrouping the recommended candidates list wise. It is also stated in the counter affidavit that the merit rating principles issued in B.P.Ms.No.80 dated 7.2.1981 were adopted for fixing inter se seniority in the cadre of Divisional Engineer, Electrical, in each list. The marks secured by them in the respective lists was taken as the basis for fixing their inter se seniority in the cadre of Divisional Engineer, Electrical. Those who retired/resigned/died were also shown in the inter se seniority list of Divisional Engineers, Electrical based on the marks secured by them at the time of their original consideration in the respective lists. The recommendations made in the respective lists in respect of those who were over looked due to bad record in their due turn for promotion as Divisional Engineer, Electrical was kept in view and they were shown in the respective lists, where they were actually recommended for promotion as Divisional Engineers, Electrical. It is also stated that the petitioner is a diploma holder and, in terms of the Regulations then in force, a diploma holder must have shown exceptional merit for promotion as Divisional Engineer, Electrical.

It is clear from the counter affidavit that a detailed exercise was undertaken by the respondents to revise the list of Divisional Engineers from the panels drawn from 12.4.1982 to 17.11.1986 and that Assistant Divisional Engineers, Electrical, who were earlier not considered for promotion, were also considered for inclusion and for assigning appropriate places in the seniority list of Divisional Engineers. The very fact that, on such a review the petitioner's name was not included in the list of Divisional Engineers would establish

that he was not selected.

Sri C.Srinivas Baba, learned counsel for the petitioner would contend that the counter affidavit only refers to consideration of cases of Assistant Divisional Engineers from the panels drawn from 12.4.1982 to 17.11.1986, and it is silent as to what transpired during the years prior thereto. According to the learned counsel, since the petitioner was eligible to be considered for promotion as a Divisional Engineer on completion of 10 years of service as Assistant Divisional Engineer with effect from 1.9.1967, he was entitled to be promoted as a Divisional Engineer from 1.9.1977, and since the counter affidavit is silent as to the selections made during the period from 1.9.1977 till 12.4.1982, a direction should be issued to the respondents to consider the case of the petitioner for promotion to the post of Divisional Engineer, Electrical during the period 1977-82. I am afraid, I cannot agree. It is not even the case of the petitioner that any of the Assistant Divisional Engineers, juniors to him in the seniority list, were promoted as Divisional Engineers during the period 1.9.1977 to 12.4.1982. The counter affidavit is no doubt silent as to what transpired prior to 12.4.1982 and the reasons for not reviewing the panels for the earlier period. However, in the absence of a specific case having been made out that any person junior to the petitioner was considered for selection as Divisional Engineer, Electrical during the period 1.9.1977 to 12.4.1982, the relief sought for in the writ petition cannot be granted. It must also not be lost sight of that, while the petitioner was given the benefit of notional promotion as Assistant Divisional Engineer, Electrical with effect from 1.9.1977 pursuant to the orders of the Supreme Court in C.A.5336 of 1983 dated 21.8.1990 and the seniority list of Assistant

Divisional Engineers was drawn up afresh in the year 1991, the petitioner has kept quiet for a period of six years before invoking the jurisdiction of this Court. That a representation was submitted in the interregnum would not absolve the petitioner of having belatedly filed this writ petition. Since it now transpires that all Assistant Divisional Engineers, including the petitioner, whose seniority was revised in terms of the orders issued in B.P.Ms.No.1118 dated 17.10.1989, were considered for promotion as Divisional Engineers, Electrical from the panels drawn from 12.4.1982 to 17.11.1986 and as it was found that the petitioner did not possess exceptional merit, he was not promoted as Divisional Engineer, Electrical. The relief sought for in the writ petition cannot be granted. The writ petition fails and is accordingly dismissed. No costs.

RAMESH RANGANATHAN,J

Dt:05.3.2007

msv.